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E.O. 12958: DECL: 06/14/2019

TAGS: MARR PREL PARM KTIA RS

SUBJECT: U.S. REVISED JOINT STATEMENT RESPONDING TO
RUSSIAN SUGGESTIONS REGARDING U.S.-RUSSIA JOINT DATA
EXCHANGE CENTER (JDEC) LIABILITY AND TAXATION LANGUAGE

REF: A. MOSCOW 1491 B. STATE 50903

Classified By: Classified By: ISN Acting A/S Vann Van Diepen,
Reason E.O. 12958 1.4 (b) and (d)

¶11. This is an action request. See paragraph 4.

¶12. (C) SUMMARY. A U.S. interagency delegation led by Ambassador Stephen Mull met with a Russian interagency delegation headed by Deputy Foreign Minister Sergey Ryabkov on ballistic missile defense and U.S.-Russia Joint Data Exchange Center (JDEC) issues on May 28, 2009, in Moscow. (Full reporting on this meeting provided reftel A.) During the course of the JDEC discussion the issues of liability and taxation were discussed. The Russian delegation indicated that their legal experts were still reviewing the contractor liability issue and were close to a final conclusion. The MFA legal representative noted that they had previously explained that they did not believe the Plutonium Disposition Agreement could serve fully as a model for the JDEC agreement, particularly on the question of liability (note: the delegation decided to have the U.S. and Russian legal representatives meet in a separate room to discuss the unresolved issues). The Russian legal representative eventually accepted that Russian views could be accommodated in the U.S. draft Joint Statement that the two sides had agreed in June, 2008, would be the basis for discussion of liability and taxation. On the taxation issue, DFM Ryabkov said he wanted to know what the U.S. intended to do with imported equipment when it became obsolete or replaced. Would the U.S. destroy it or otherwise dispose of it in Russia, or return it to the U.S.? Moscow believed this question should be specifically addressed in the Joint Statement. The Russians also indicated that the JDEC agreement would not be a technical assistance agreement, as the Cooperative Threat Reduction agreement was, and that under Russian law, the tax exemption of imported equipment provided in cases of technical assistance would not apply. DFM Ryabkov added that Russian tax experts would provide some proposals in the next few days (those proposals have not yet been received).

¶13. (SBU) SUMMARY CONTINUED. State and DOD lawyers have further revised the draft Joint Statement on liability and taxation that was provided to the Russians on May 19, 2009 (reftel B), to take into account Russian comments made during the May 28 meeting in Moscow. The non-paper and revised draft Joint Statement provided in paragraphs 5 and 6 move further to meet the points raised by the Russians without sacrificing the U.S. substantive approach to liability and taxation. Even though there has not been a response from the Russians on taxation, Washington believes we should remain proactive on these two issues by providing the non-paper and revised draft Joint Statement in advance of Ambassador Mull's meetings in Moscow the week of June 15. We believe

that this further draft of the Joint Statement accommodates all concerns the Russians have raised to date.

4.(SBU) ACTION REQUEST: Embassy Moscow is requested to convey the non-paper in paragraph 5 and the revised Joint Statement on Liability and Taxation in paragraph 6 to Deputy Foreign Minister Ryabkov, Ministry of Foreign Affairs, and/or other appropriate MFA officials, as well as Col. Yevgeniy Il'in, Main Directorate of International Military Cooperation, Ministry of Defense. Post is requested to provide confirmation of delivery and to report back to Washington any initial reactions. Ambassador Mull may also hand over the U.S. non-paper and revised Joint Statement during his meetings in Moscow.

15. (SBU) BEGIN TEXT OF NON-PAPER:

U.S. JDEC Non-Paper on the Draft Joint Statement on Liability and Taxation (As Further Modified)
June 15, 2009

- We are pleased to provide you with another draft of the Joint Statement on liability and taxation, further revised to reflect the discussion on liability and taxation during the May 28 talks in Moscow.

Liability

- Regarding the liability provisions, you will see that we adopted the approach requested by Russia as it relates to coverage of U.S. Government personnel through the privileges and immunities provisions that are already part of the JDEC agreement.

- In this regard, we would note the following:

-- In paragraph 1, we kept only those parts that are necessary to make clear what the waiver of government claims pertains to.

-- All of the "old" paragraph 2 has been deleted, and replaced by a new paragraph 2 that refers to privileges and immunities for U.S. Government personnel provided elsewhere in the JDEC MoA (in another Joint Statement). Consistent with this, paragraph 4(c), which also refers to privileges and immunities, has been deleted.

-- We have retained paragraph 3, which is a general consultation provision that is unrelated to former paragraph 2. We believe that such a provision is not only in keeping with the cooperative nature of the JDEC project, but could also be looked to in case unforeseen issues arise in the course of JDEC activities, e.g., a complaint from a third party.

Taxation

- On the taxation provisions, you will see that we have added provisions that ensure that (1) imports of JDEC equipment will be described to Russian authorities by the U.S., and (2) no JDEC equipment will be used for commercial purposes unrelated to JDEC activities.

Conclusion

- Between the accommodations reflected above and the earlier ones presented to Russia (concerning the deletion of references to contractors from the liability provisions and the addition of language to one of the taxation provisions, both as requested by Russia last June), we feel that we have shown maximum flexibility to accommodate all of the concerns Russia has identified.

- We do so, again, for the purpose of this agreement, and in a spirit of cooperation and with an objective to expeditiously resolve the liability and taxation issues once and for

all -- in time for the July summit.

- In this connection and from a timing standpoint, it is important that Russia accept this significantly modified Joint Statement on liability and taxation without further changes, so that we can remove these issues as impediments to moving forward on JDEC implementation.

END TEXT OF NON-PAPER.

¶6. (SBU) BEGIN TEXT OF REVISED JOINT STATEMENT:
**JOINT STATEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE RUSSIAN FEDERATION REGARDING THE ISSUES OF
LIABILITY AND THE IMPOSITION OF TAXES ON ACTIVITIES
CONDUCTED PURSUANT TO THE JDEC MEMORANDUM OF AGREEMENT**

The United States of America and the Russian Federation (hereinafter "the Parties"),
In connection with the Memorandum of Agreement between the United States of America and the Russian Federation on the Establishment of a Joint Center for the Exchange of Data from Early Warning Systems and Notifications of Missile Launches, signed at Moscow on June 4, 2000, hereinafter referred to as the "JDEC Memorandum of Agreement," Pursuant to paragraph 2 of Article 9, and Article 15 of the JDEC Memorandum of Agreement,
Hereby agree that:

¶1. The Government of the Russian Federation shall bring no claims or legal proceedings of any kind against the Government of the United States of America for any loss or damage of whatsoever nature, including (but not limited to) personal injury, loss of life, or direct, indirect, or consequential damage caused to property of the Government of the Russian Federation, arising out of activities undertaken pursuant to the JDEC Memorandum of Agreement.

¶2. The personnel of the Government of the United States of America working at the JDEC shall be accorded the privileges and immunities as set forth in the Joint statement on Privileges and Immunities to the JDEC Memorandum of Agreement

¶3. The Parties shall hold prompt consultations, as appropriate or upon the request of either of them, on claims or legal proceedings arising out of activities undertaken pursuant to the JDEC Memorandum of Agreement.

¶4. Nothing in this Joint Statement shall be construed as:

(a) acknowledging the jurisdiction of any court or forum;

(b) waiving the sovereign, diplomatic, jurisdictional or any other immunity of either Party with respect to claims or legal proceedings that may arise out of activities undertaken pursuant to the JDEC Memorandum of Agreement;

(c) permitting claims or legal proceedings in the courts of any country contrary to the provisions of that country's laws;

(d) preventing the Parties from providing compensation in accordance with their national laws; or

(e) preventing either Party from bringing claims or legal proceedings against nationals of its country or permanent residents of its country.

¶5. For the purposes of this Joint Statement, the term "contractors" shall mean contractors, subcontractors, consultants, suppliers, or sub-suppliers of equipment, goods or services at any level.

¶6. The Government of the United States of

America, its personnel, contractors and contractors' personnel shall not be liable to pay any tax or similar charge by the Russian Federation or any of its instrumentalities on activities undertaken pursuant to the JDEC Memorandum of Agreement. The provisions of this paragraph shall not exempt any contractor's personnel who are nationals of or ordinarily resident in the Russian Federation, and are present in the Russian Federation in connection with such activities, from income, social security, or any other taxes imposed by the Russian Federation, or by any instrumentalities thereof, regarding income received in connection with the implementation of the JDEC Memorandum of Agreement.

17. The Government of the United States of America, its personnel, contractors, and contractors' personnel may import into, and export out of, the Russian Federation necessary equipment, supplies, materials or services required to implement the JDEC Memorandum of Agreement. The importation and exportation of such equipment, supplies, materials or services, which shall be described by the Government of the United States of America, shall be exempt from any license fees, restrictions, custom duties, taxes, or any other charges by the Russian Federation or any of its instrumentalities, but not from the procedures called for by the export control system. Such imported equipment, supplies, materials or services shall not be used in the Russian Federation for commercial purposes unrelated to JDEC activities.

18. This Joint Statement is intended to implement paragraph 2 of Article 9, and Article 15, of the JDEC Memorandum of Agreement.

19. The NATO-Russia Partnership for Peace Status of Forces Agreement applies to JDEC activities, and the provisions of that Agreement shall apply to the extent not inconsistent with the provisions of the JDEC MOA and this and any other Joint Statements annexed thereto.

After agreement by the parties on the issue of "rare exceptions", this Joint Statement shall enter into force on the date of the last note of an exchange of notes between the Parties indicating that the national procedures required for its entry into force have been completed, and shall remain in force as long as the JDEC Memorandum of Agreement remains in force.

DONE at _____, the _____ day
of _____, 2009, in duplicate in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

FOR THE RUSSIAN FEDERATION:

END TEXT OF REVISED JOINT STATEMENT.
CLINTON